

**Report to District Development
Management Committee**

Report Reference: DEV-001a-2015/16
Date of meeting: 5 August 2015



**Epping Forest
District Council**

**Subject: Planning Application ref EPF/3005/14 - Land at Barkers Farm,
Mount End Road, Theydon Mount - Change of use of former farm
office and dairy building and barn to create one live/work unit.**

Responsible Officer: Nigel Richardson (01992 564110)
Stephan Solon (01992 564018)

Democratic Services: Gary Woodhall (01992 564470)

Recommendation:

(1)) That planning permission be granted subject to the following conditions:

- 1 The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this notice.**
- 2 The development hereby permitted will be completed strictly in accordance with the approved drawings nos: Site Plan, 09-189/01, 09-189/02, 09-189/03, 09-189/04, 09-189/05, 09-189/06**
- 3 Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any other Order revoking, further amending or re-enacting that Order) no extensions, roof enlargements or outbuildings generally permitted by virtue of Classes A, B and E of Part 1 of Schedule 2 to the Order shall be undertaken without the prior written permission of the Local Planning Authority.**
- 4 The premises shall be used solely for mixed use comprising use for purposes within Use Classes C3, B1(b), B1(c) and B8. and for no other purpose (including any other purpose in Use Class B1 of the Schedule to the Town & Country Planning (Use Classes) Order 1987 (as amended), or in any provision equivalent to that Class in any Statutory Instrument revoking or re-enacting that Order.**
- 5 No development, including site clearance, shall take place until a scheme of soft landscaping and a statement of the methods, including a timetable, for its implementation (linked to the development schedule), have been submitted to the Local Planning Authority and approved in writing. The landscape scheme shall be carried out in accordance with the approved details and the agreed timetable. If any plant dies, becomes diseased or fails to thrive within a period of 5 years from the date of planting, or is removed, uprooted**

or destroyed, it must be replaced by another plant of the same kind and size and at the same place, unless the Local Planning Authority agrees to a variation beforehand in writing.

Click on the link below to view related plans and documents for this case:

http://planpub.eppingforestdc.gov.uk/NIM.websearch/ExternalEntryPoint.aspx?SEARCH_TYPE=1&DOC_CLASS_CODE=PL&FOLDER1_REF=572597

Report:

1. The application was recommended for approval subject to the conditions stated in the above recommendation, but was deferred at the last meeting on 10 June 2015 because the Committee had concerns about the precise scope of paragraph 90 of the National Planning Policy Framework in respect of Green Belt openness impact and the way in which it was being interpreted in this case. Officers were requested to obtain further legal advice on this aspect of the National Planning Policy Framework. In addition there was expressed doubt by one Member that a garage door had existed for sometime, if at all, on the undercroft area of the main front building. The applicant, Mr Barker has subsequently provided evidence that a garage door exists and has done since at least 2006.

2. Counsel's legal advice has been obtained and has been separately sent to the Committee Members as it is legally privileged information. In summary, the legal advice is that the officer's interpretation in the committee report and advice to Members is correct. Furthermore, it confirms that refusal on the grounds of harm to openness in the Green Belt in this case would not be supported on appeal, which includes the proposed new alteration to enclosing of the undercroft.

3. Prior to this, the application was considered by the Area Plans Sub-Committee East on 15 April 2015. Following the debate on the application a motion was put forward and seconded to refuse the application on the grounds that the proposed development would compromise the openness of the Green Belt and that it is not a sustainable location for residential development. The vote was lost. Members then voted on the Planning Officer's recommendation to grant consent for the proposal and this was agreed.

4. However, 5 members then stood to exercise the right under section 13, para (2) of the Constitution to require that no action be taken and to defer decision to the District Development Control Committee (DDCC) (now known as District Development Management Committee (DDMC). Members requested that the report to DDMC provide more detailed explanation of the history of the site, including the enforcement action and appeal decisions.

5. The Officer's report to the Sub-Committee together with an addendum setting out the Planning history for Barkers Farm as a whole is set out below. Members are advised that the key points to be drawn from the planning history in relation to the specific proposed development are explained in full in the original Officers report.

6. Briefly, there is a history of Planning permission being refused and a subsequent appeal dismissed on the basis that there was no evidence of agricultural need for the proposed dwelling. Since the publication of the National Planning Policy Framework, the issue of agricultural need falls away in the case of changes of use on the basis that of itself, it is not inappropriate development in the Green Belt. Furthermore, the National Planning Policy Framework has created a different planning policy context within which this proposal should be assessed and officers consider that the re-use of the buildings for the proposed purpose will not cause undue harm and therefore recommend the grant of planning permission, which is

supported by Area Plans Sub-Committee East.

ORIGINAL REPORT to AREA PLANS SUB-COMMITTEE EAST:

This application is before this Committee since the recommendation is for approval contrary to an objection from a local council which is material to the planning merits of the proposal (Pursuant to The Constitution, Part Three: Planning Services – Delegation of Council functions, Schedule 1, Appendix A.(g))

Description of Site:

The application site comprises land that is the farm yard of a former farm. It is situated off the east side of Mount End Road within Mount End. Land rises east of the site and somewhat less steeply to the north. It is within the Green Belt.

The site comprises a substantial two-storey brick built building originally constructed as a dairy building and farm office. It is referred to as the dairy building in this report. A single storey wing projects to the rearwards from the main bulk of the building adjacent to the northern site boundary. It extends up to a substantial modern barn, a former stock building that is now divided into 4 units.

The site also includes a large tarmac surfaced parking area between the former dairy and the highway from which the site is accessed. A grassed area immediately south of the former dairy and barn, approximately 22m by 22m, is included within the application site.

Description of Proposal:

Change of use of former farm office and dairy building and barn to create one live/work unit. Submitted plans show the dairy building would be wholly laid out as a dwellinghouse with the single-storey projection used as storage. The barn would be used for mixed purposes within Use Classes B1 and B8, with such use being carried out by the occupants of the new dwellinghouse.

The proposal includes works to infill an undercroft area between the parking area to the front of the building and a yard area to the rear between it and the barn. The infilled part of the building would form a living room. Its front elevation would be enclosed by glazed bi-fold doors.

No other alterations to the exterior of the building are proposed.

Relevant History:

EPF/0542/95 Retention of existing barn of approx 250m² and retention of mobile home for 2 years. Refused 11/10/1995, appeal T/APP/J1535/A/95/261010/P7 allowed 11/12/1997. The mobile home was given a temporary consent restricting its occupation to ensure a justification for its retention in connection with the purpose of agriculture on the holding remained. The mobile home is no longer on site.

EPF/0167/96 Retention of mobile home and dairy unit. Refused 24/04/1996, appeal T/APP/J1535/A/95/269395/P7 allowed 11/12/1997. The mobile home is no longer on site.

- CLD/EPF/0600/02 Certificate of lawful development for construction of existing parking area in front of dairy building. Granted 20/05/2002 on the basis that the parking area had existed for more than four years.
- EPF/1482/03 Change of use of milking parlour and dairy to office use and conversion of part of stock building to light industrial use. Refused 25/02/2004, appeal APP/J1535/A/04/1143629 allowed 06/09/2004.
- EPF/0395/05 Insertion of two new dormer windows to front and side to front building. Approved 29/04/2005
- EPF/2342/07 Change of use from farm office and ice cream parlour to a one bedroom supervisory unit of accommodation for existing goat farm. Refused 12/12/2007, appeal APP/J1535/A/08/2065857 dismissed 15/09/2008.
- CLD/EPF/2311/09 Certificate of lawful development in respect of residential use of part of former dairy building. Appeal against non-determination dismissed 08/02/2012 (PINS ref APP/J1535/X/11/2152045).
- CLD/EPF/1066/11 Certificate of lawful development for works of alteration to the exterior and interior of former farm office. Refused 25/08/2011 on the basis that the claim was unclear and appeared to amount to a claim in respect of the use of the building as a dwellinghouse that was the subject of the Appeal in respect of application CLD/EPF/2311/09.
- EPF/2390/13 Application for a determination as to whether prior approval of the LPA is required for the use of part of the former dairy building as a dwellinghouse. Refused 24/12/2012 on the basis that proposed use was not Permitted Development since the building was not in lawful use as an office immediately before 30 May 2013 or prior to that date and, even if it were, insufficient information had been submitted to deal with the matter of potential land contamination.
- ENF/0062/11 Enforcement notices issued 06/07/11 alleging change of use of part of dairy building from B1 Office Use and use of summerhouse to residential purposes as a separate dwellinghouses. Notices found to be invalid and quashed at appeal on 08/02/2012 (PINS ref APP/J1535/C/11/2157758).

Subsequent enforcement notice issued 02/08/2013 alleging change of use of the whole of Barkers Farm to a mixed use including residential purposes. Subsequent appeal dismissed and Notice upheld on 01/07/2014 with variations (PINS ref APP/J1535/C/13/2204446). The requirements of the Notice include cessation of the residential use of the dairy building.

NOTE: None of the above enforcement notices were appealed on the ground that planning permission should be granted. The planning merits of the alleged uses were therefore never considered by the Planning Inspectors who heard the appeals.

Policies Applied:

The National Planning Policy Framework (NPPF) sets the policy context for assessing the development proposals. The policies of the District Councils Local Plan and Alterations are given weight in accordance with their conformity with the NPPF. The following saved Local Plan and Alteration Policies are compliant with the NPPF and are therefore given significant weight.

CP1	Achieving Sustainable Development Objectives
CP2	Protecting the Quality of the Rural and Built Environment
GB2A	Development in the Green Belt
GB8A	Change of Use or Adaptation of Buildings
ST1	Location of Development
ST2	Accessibility of Development
ST4	Road Safety
ST6	Vehicle Parking
RP4	Contaminated Land
RP5A	Adverse Environmental Impacts
DBE8	Private Amenity Space
DBE9	Loss of Amenity
LL11	Landscaping Schemes

In addition to the above policies, the Essex County Council Parking Standards 2009 are a material consideration of significant weight.

NOTE: - Local Plan and Alteration policy GB9A – Residential Conversions, is not compliant with the NPPF and therefore is not a material consideration

Consultation Carried Out and Summary of Representations Received

Number of neighbours consulted. 9

Site notice posted.

Responses received:

11 MOUNT END: - Objection

Reference made to appeal APP/J1535/C/13/2204446 pointing out a requirement of the notice is the cessation of residential use of the site and maintaining that it is not clear whether all the requirements of the notice had been complied with. It is pointed out the Appellant had an award of costs made against him and it is questioned whether those costs were paid to the Council.

There is a presumption against residential use in the Green Belt, especially where the applicant seeks to achieve such use by deception. The applicant should not be allowed to benefit from his deception.

THEYDON MOUNT PARISH COUNCIL: Objection

Theydon Mount Parish Council objects to this proposal. The Parish Council is of the opinion that the applicant's activities over many years have been nothing more than a blatant attempt to achieve a dwelling in the Green Belt. The Parish Council further notes the Inspector, in his dismissal of an earlier appeal in relation to the site [Appeal Decision APP/J1535/C/13/2204446] states, among other things, that "...Mr Barker has carried out a deliberate campaign to confuse and obscure facts in relation to residential use of the Farm Office, making whatever assertions served him best at different times" [p.10 para 56].

The applicant has a long history of attempting to establish a dwelling on this Green Belt site and the Parish Council requests that this application be refused.

Main Issues and Considerations:

The application site is not within any flood risk zone and is not known to have any interest for biodiversity or to be likely to include contaminated land. In relation to the matter of biodiversity, the site does not contain any traditional timber framed building or traditional farm building. The site is not in a conservation area, does not contain any listed buildings and is not adjacent to any such building. There are no preserved trees on the application site.

The proposal would not have any adverse impact on the safe and free flow of traffic on the adjacent highway. It would also result in a good standard of accommodation with no significant change to the layout of the site or the appearance of existing buildings. Accordingly, the main matter to assess when considering the merits of this proposal is whether it is inappropriate development in the Green Belt. Other matters to consider are sustainability and consequence for living conditions.

Appropriateness in the Green Belt, and comments on representations received:

The planning history set out above is a material consideration, but it is not of significant weight when assessing compliance with planning policy. A previous planning application proposing residential use of part of the dairy building (EPF/2342/07) was put forward on the basis that the use was required in connection with agriculture. Planning permission was refused and a subsequent appeal dismissed on the basis that there was no evidence of agricultural need for the proposed dwelling. In this case the proposal is not put forward on the basis of agricultural need, but on the basis that it is not inappropriate development of itself. Furthermore, the National Planning Policy Framework has created a different planning policy context within which this proposal should be assessed.

The Council's first enforcement notices attacking residential use of buildings as dwellinghouses (issued in July 2011) together with the subsequent appeal decision that the notices were invalid (February 2012) both preceded the NPPF. The effective notice (issued in August 2013), attacked a mixed use of the whole of Barkers Farm on the basis that the use as a whole results in an intensification of the use of the site that is harmful to the openness of the Green Belt and consequently amounts to inappropriate development. In making that assessment the officer report recommending enforcement action gave very significant weight to Local Plan and Alteration Policy GB9A. Policy GB9A only permitted the reuse of buildings in the Green Belt for residential purposes if they are worthy of retention and either the building is not appropriate for re-use for business purposes, is a subordinate part of a scheme for business reuse or is required in connection with agriculture. That policy has since been found to be not compliant with the policies of the NPPF. It therefore cannot be applied to this application. Moreover, the current proposal does not relate to Barkers Farm as a whole, but only the most intensely developed part of it.

The primary policy against which the matter of appropriateness in the Green Belt must be assessed is that set out in paragraphs 79 to 92 of the National Planning Policy Framework. That has been the policy position since March 2012. Moreover, as pointed out above, the appeals against the enforcement notices issued in 2011 and 2013 were not made on the ground that planning permission should be granted therefore it did not fall to the Planning Inspectors to consider this matter.

Consequently, the decisions on those appeals are of very limited weight when considering the merits of this proposal. No significant weight can be given to the previous behaviour of the applicant when assessing whether or not this proposal is inappropriate development in the Green Belt. Equally, no weight can be given to whether or not the requirements of the effective enforcement notice have been complied with or whether or not the Council's successful costs claim has been paid. The concern of the Parish Council, while focusing on the planning history and applicant's behaviour, does stem from its concern regarding the Green Belt which this report is primarily concerned with.

Paragraph 90 of the NPPF makes clear the re-use of buildings is not inappropriate in the Green Belt provided that the buildings are of permanent and substantial construction, and that the new use preserves the openness of the Green Belt and does not conflict with the purposes of including land in Green Belt.

There is no doubt the dairy building and barn are permanent and substantial buildings. They have been inspected by planning officers and planning enforcement officers in connection with the most recent appeals. They were also previously inspected by Council Building Inspectors in connection with internal works carried out in 2006.

The new use would not result in any additional structures being built since it is entirely dependant on existing buildings and hard surfacing. The proposed alterations to the dairy building would not increase its size. At most, fencing in some form would be erected to enclose the grassed area south of the building to give reasonable privacy to a private garden, and planning conditions can be used to control its appearance and secure appropriate landscaping at the site. Furthermore, the size of the proposed garden is very modest in relation to the size of the dairy building. Activity generated by the mixed use would be no more, and probably less, than that likely to arise if the buildings were used for agriculture or for light industrial and office purposes as previously permitted under planning permission reference EPF/1482/03. In the circumstances it is concluded the proposed use would not have any greater impact on the openness of the Green Belt than the lawful or previously permitted uses. Should planning permission be granted, however, it is necessary to impose a planning condition removing permitted development rights for extensions and roof enlargements to the dwelling and for the erection of outbuildings within its curtilage. Since the application site defines the curtilage of the dwellinghouse, it is not necessary to include a condition restricting the size of the curtilage of the dwellinghouse to the application site. That is because, as a matter of law, planning permission would be required to enlarge it.

Given the lack of harm to openness, the reuse of the application site as proposed would not adversely affect the first three of the five purposes of including land in the Green Belt (para 80 of the NPPF) – i.e. checking unrestricted sprawl, preventing neighbouring towns merging and safeguarding the countryside from encroachment. The other two purposes (preserving the special character of historic towns, and assisting in urban regeneration) are not relevant in this context.

Conclusion on Appropriateness:

Having regard to the above analysis it is concluded the buildings to be re-used are of permanent and substantial construction, the proposed new use would preserve the openness of the Green Belt and it would not conflict with the purposes of including land in Green Belt. It is therefore concluded the proposal is not inappropriate development in the Green Belt.

Sustainability:

The reuse of redundant buildings is of itself a sustainable form of development. The location of the site within the centre of a small hamlet not served by shops and other services is such that the new use will be car dependent. However, it would be no more dependant on the private car than any other dwelling within the hamlet and most probably less so. That is because the dwelling would be linked to the business use of the barn, potentially reducing the need for the occupants of the dwelling to travel elsewhere for employment.

Living Conditions:

It is not clear from the application what precise activities would take place within the barn. In order to ensure such activities do not result in poor living conditions for neighbouring dwellings, or indeed the proposed dwelling, it is necessary to restrict the uses within Use Class B1 to Use Classes B1(b) and (c) [research and development of products and any industrial process which can be carried out in any residential area without detriment to the amenity of the area]. Use Class B1(a) [offices] of the barn as a whole is undesirable since it would be likely to result in a significant number of people who do not live at the new dwelling accessing the barn via the more private areas of the dwelling, with the potential to cause excessive harm to its privacy.

Conclusion:

The proposal complies with relevant planning policy and it is recommended that planning permission be granted. The planning history of the site and the behaviour of the applicant in particular are recognised but they do not attract significant weight when assessing the planning merits of the proposal. The applicant's previous behaviour cannot reasonably form the basis for withholding consent.

Should you wish to discuss the contents of this report item please use the following contact details by 2pm on the day of the meeting at the latest:

***Planning Application Case Officer: Stephan Solon
Direct Line Telephone Number: 01992 564018***

***or if no direct contact can be made please email:
contactplanning@eppingforestdc.gov.uk***

**PLANNING APPLICATION AND PLANNING ENFORCEMENT HISTORY FOR
BARKERS FARM AS A WHOLE**

Note 1. References with the suffix ENF/ relate to Planning Enforcement Investigations where an enforcement notice was issued.

Note 2. The following history is based on evidence given to the Planning Inspector by the case officer in respect of an appeal against the enforcement notice issued on 02/08/2013.

1. ***The planning history in respect of the application site is set out below:***

<u>Application ref.</u>	<u>Description and decision.</u>
EPF/0542/95	Retention of existing barn of approx 250m2 and retention of mobile home for 2 years. Refused 11/10/1995, appeal T/APP/J1535/A/95/261010/P7 allowed 11/12/1997. The mobile home was given a temporary consent restricting its occupation to ensure a justification for its retention in connection with the purpose of agriculture on the holding remained. The mobile home is no longer on site.
EPF/0167/96	Retention of mobile home and dairy unit. Refused 24/04/1996, appeal T/APP/J1535/A/95/269395/P7 allowed 11/12/1997.
CLD/EPF/2022/00	Certificate of lawful development for erection of proposed single storey extension for use as milking parlour. Granted 22/01/2001
CLD/EPF/0600/02	Certificate of lawful development for construction of existing parking area in front of dairy building. Granted 20/05/2002 on the basis that the parking area had existed for more than four years.
EPF/1482/03	Change of use of milking parlour and dairy to office use and conversion of part of stock building to light industrial use. Refused 25/02/2004, appeal APP/J1535/A/04/1143629 allowed 06/09/2004.

- EPF/0395/05 Insertion of two new dormer windows to front and side to front building. Approved 29/04/2005
- EPF/2342/07 Change of use from farm office and ice cream parlour to a one bedroom supervisory unit of accommodation for existing goat farm. Refused 12/12/2007, appeal APP/J1535/A/08/2065857 dismissed 15/09/2008.
- CLD/EPF/2311/09 Certificate of lawful development in respect of residential use of part of former dairy building. Appeal against non-determination dismissed 08/02/2012 (PINS ref APP/J1535/X/11/2152045).
- CLD/EPF/1066/11 Certificate of lawful development for works of alteration to the exterior and interior of former farm office. Refused 25/08/2011 on the basis that the claim was unclear and appeared to amount to a claim in respect of the use of the building as a dwellinghouse that was the subject of the Appeal in respect of application CLD/EPF/2311/09.
- ENF/0062/11 Enforcement notices issued 06/07/11 alleging change of use of part of dairy building from B1 Office Use and use of summerhouse to residential purposes as a separate dwellinghouses. Notices found to be invalid and quashed at appeal on 08/02/2012 (PINS ref APP/J1535/C/11/2157758).
- EPF/2390/13 Application for a determination as to whether prior approval of the LPA is required for the use of part of the former dairy building as a dwellinghouse. Refused 24/12/2012 on the basis that proposed use was not Permitted Development since the building was not in lawful use as an office immediately before 30 May 2013 or prior to that date and, even if it were, insufficient information had been submitted to deal with the matter of potential land contamination.

ENF/0062/11 Subsequent enforcement notice issued 02/08/2013 alleging change of use of the whole of Barkers Farm to a mixed use including residential purposes. Subsequent appeal dismissed and Notice upheld on 01/07/2014 with variations (PINS ref APP/J1535/C/13/2204446). The requirements of the Notice include cessation of the residential use of the dairy building.

2. ***The planning history for a detached building adjacent to the highway, at Barkers Farm but on land outside the application site, is as follows:***

<u>Application ref.</u>	<u>Description and decision.</u>
EPF/0517/07	New roof to existing building. Approved 30/05/2007.
CLD/EPF/0334/09	Certificate of Lawful Development for retention of summerhouse. Granted 17/04/2009 on the basis that the building had existed for more than 4 years.
EPF/0960/09	Change of use of an existing building and land from leisure to residential – Refused 24/07/2009, appeal APP/J1535/A/09/2117295 dismissed 14/07/2010.
EPF/1439/09	Change of use of an existing building at front of the site to canteen (A3 use). Refused 05/10/2009, appeal APP/J1535/A/09/211308 dismissed 27/01/2010.
ENF/0549/10	Enforcement Notice issued 06/07/2011 in respect of the use of the summerhouse for residential purposes and the creation of a domestic garden curtilage around it. Notice found to be invalid and quashed at appeal on 08/02/2012 (PINS ref APP/J1535/C/11/2157738).

3. ***The planning history specifically relating to a building on the southern boundary of Barkers Farm, on land outside of the application site is as follows:***

<u>Application ref.</u>	<u>Description and decision.</u>
EPF/0965/02	Stable block consisting of 2 horseboxes, tack room and hay barn. Approved 24/07/2002 subject to conditions including condition no. 2, which states: <i>“The stables shall not be used for any business or commercial activity such as livery but only in connection with the keeping of horses for private recreational purposes.”</i>

4. ***The planning history specifically relating to land immediately west of the application site forming part of a field rear of the barn is as follows:***

<u>Application ref.</u>	<u>Description and decision.</u>
CLD/EPF/1809/06	Certificate of Lawful Development for an existing use for the storage of agricultural equipment and building materials, bricks, tiles, scaffolding and two lorry bodies, all ancillary to the agricultural use of the agricultural holding known as Barkers Farm, Mount End, Theydon Mount. Granted 30/10/2006.